

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

Blue Spike, LLC,

*Plaintiff,*

v.

TEXAS INSTRUMENTS, INC., et  
al.,

*Defendants.*

CASE NO. 6:12-cv-499 MHS

LEAD CASE

Jury Trial Demanded

§

**JOINT MOTION TO DISMISS BLUE SPIKE'S THIRD AND  
THIRTEENTH AFFIRMATIVE DEFENSES AGAINST AUDIBLE  
MAGIC CORP. (DKT. NOS. 1742, 1746, and 1747)**

Plaintiff Blue Spike, LLC and Counter-Defendants Blue Spike, Inc. and Scott Moskowitz (collectively “Blue Spike”) and Audible Magic Corp. move the Court to dismiss two of Blue Spike’s Affirmative Defenses. On September 5, 2014 Blue Spike filed a Reply in Response to Audible Magic, Corp.’s counterclaims. Blue Spike asserted seventeen affirmative defenses in total. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the Parties stipulate to the dismissal without prejudice of Blue Spike’s Third Affirmative Defense of Invalidity and Blue Spike’s Thirteenth Affirmative Defense of Unenforceability for Inequitable Conduct.

Respectfully Submitted,

/s/ Randall T. Garteiser  
Randall T. Garteiser  
Texas Bar No. 24038912  
rgarteiser@ghiplaw.com  
Christopher A. Honea  
Texas Bar No. 24059967  
chonea@ghiplaw.com  
Christopher S. Johns  
Texas Bar No. 24044849  
cjohns@ghiplaw.com  
Kirk J. Anderson  
California Bar No. 289043  
Peter S. Brasher  
California Bar No. 283992  
**GARTEISER HONEA, P.C.**  
218 N. College Ave.  
Tyler, Texas 75702  
Telephone: (903) 705-7420  
Facsimile: (888) 908-4400

***Counsel for Blue Spike LLC***

/s/ Eric H. Findlay  
Eric H. Findlay (Texas Bar No. 00789886)  
Walter W. Lackey, Jr. (Texas Bar No.  
24050901)  
FINDLAY CRAFT, P.C.  
102 N. College Ave., Suite 900  
Tyler, TX 75702  
Telephone: (903) 534-1100  
Facsimile: (903) 534-1137  
efindlay@findlaycraft.com  
wlackey@findlaycraft.com

Gabriel M. Ramsey—*LEAD ATTORNEY*  
I. Neel Chatterjee  
ORRICK, HERRINGTON & SUTCLIFFE,  
LLP  
1000 Marsh Road  
Menlo Park, CA 94025  
Telephone: (650) 614-7400  
Facsimile: (650) 614-7401  
gramsey@orrick.com  
nchatterjee@orrick.com

Alyssa M. Caridis  
ORRICK, HERRINGTON & SUTCLIFFE,  
LLP  
777 S. Figueroa St.  
Suite 3200  
Los Angeles, CA 90017  
Telephone: (213) 629-2020  
Facsimile: (213) 612-2499  
acaridis@orrick.com

Christopher J. Higgins  
ORRICK, HERRINGTON & SUTCLIFFE,  
LLP  
1152 15th Street, NW  
Washington, DC 20005  
Telephone: (202) 339-8418  
chiggins@orrick.com

***Counsel for Audible Magic, Corp.***

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser  
Randall T. Garteiser